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In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, appellants,
v.
THE UNITED STATES. } No. 52.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

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v.
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BRIEF FOR THE UNITED STATES.

STATEMENT OF FACTS.

This is a suit brought by the United States in the United States circuit court for the district of Minnesota against appellants and Thomas Reed, to vacate a patent which was issued by a mistake to Thomas Reed, and asking that the defendants be restrained from setting up any title whatever under or through said patent.

The appellants claim title through Reed. Judgment by default was taken against Reed, and the other defendants answered. (Rec., pp. 12 and 119.)

A stipulation was made as to the facts. (Rec., pp. 37–40.)

The circuit judge decided in favor of the complainant, and upon appeal the decree was affirmed by the circuit court of appeals of the eighth circuit. The opinion of the circuit judge is found on pages 28–33, and the opinion of the circuit court of appeals appears on pages 123–127 of the record.

The facts as found by the circuit judge are as follows:

I.

The land described in the patent sought to be canceled in this action was a part of the public domain held by the Government at the time of the issuing of the patent. (Bill, fol. 2, and page 1 of answer.)

II.

On the 21st day of July, 1885, Orilie Stram, formerly Moreau, adjusted a location previously made on unsurveyed land of complainant with Sioux half-breed scrip, issued under an act of Congress of July 17, 1854, to lots one and two (1 and 2), and the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$), and northwest quarter of the southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section thirty (30), town. sixty-three (63) N., range eleven (11) W., and other land in the Duluth land district of Minnesota; and that said locations were posted in the proper tract books of the office of the Commissioner of the General Land Office on the 9th day of September, 1885. (Exhibits 1 and 2, record, pp. 25 to 48, inclusive.)

III.

The validity of these adjustments was contested by one Fred. T. Huntress; and Thomas W. Hyde and Angus McDonald made certain preemption claims to some of said tracts. Upon appeal to the Secretary of the Interior, who had jurisdiction over said matter and said claimants, the said Secretary, on February 18, 1889, decided that said scrip locations were invalid and should be cancelled; that the preemption claims of Hyde and McDonald must be rejected; that the claim of Fred. T. Huntress could not be recognized, and that the land in controversy must be disposed of under the public land laws of the United States applicable thereto. (Bill, p. 2; answer, p. 9.)

IV.

On February 23, 1889, Thomas Reed, one of the defendants, applied to make soldier's additional homestead entry of the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$), and lots one and two (1 and 2), section thirty (30), town sixty-three (63) N., range eleven (11) W., Duluth, Minnesota, to the proper officers of the land office of the United States at Duluth, Minnesota, was allowed to make such entry, and obtained final certificate on said day, numbered 1420. (Bill, p. 3; answer, p. 9.)

V.

At the same time that said Reed made his entry, Charles P. Wheeler applied to locate the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of said section thirty (30), with Valentine scrip (the character of which is shown in Exhibit 4, pages 68

to 69, inclusive); and one Warren Wing had applied to enter lot two (2) of section thirty (30), under section 2306 of the Revised Statutes of the United States. (Exhibit 4, p. 51, and 5, p. 72; answer, p. 10.)

VI.

On the morning of the day when the Reed entry was allowed, one William M. Stokes was among other applicants to make various kinds of entries, before and at the time of the opening of the doors of the local land office at Duluth present at said doors and attempting to enter the northwest quarter of the southwest quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$) and southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$), of the section aforesaid, as a soldier's additional homestead. (Exhibit 6, pp. 92 to 111, inclusive.)

VII.

The applications of Wheeler, Wing, and Stokes were denied, and they appealed from such denial to the Commissioner of the General Land Office. (Answer, p. 10; Exhibits 4, 5, and 6; second clause of stipulation; eighth clause of stipulation.)

VIII.

On February 18, 1889, and ever since, there has been in existence in the Department of the Interior a rule that motions for review of the decisions of the Secretary of the Interior should be filed in the office of the Commissioner of the General Land Office, and that the Commissioner should thereupon suspend action under the decision sought to be reviewed, and forward to the Secretary such motion.

(Answer, p. 3; third clause stipulation, p. 19; Exhibit A, p. 119; rules of the Interior Department not printed in record.)

IX.

Motions for review of the decision of the Secretary of the Interior of February 18, 1889, were duly made and filed on March 13 and 15, 1889, respectively, by the parties affected adversely by said decision; thereupon an order was made suspending all action under the decision sought to be reviewed, and such order was of full force and such motions were pending unheard and undetermined at the time and after the issuing of the patent sought to be cancelled; the patent to said Reed hereinafter referred to was issued in direct violation or in ignorance of said order. (Third stipulation, p. 19; Exhibit A, p. 118; Exhibit 8, p. 114; Exhibit 9, p. 116; Exhibit 7, p. 112.)

X.

At the time of and before the approval for patenting of the lands described in the Reed patent and the issuance of said patent, the appeals of Charles P. Wheeler, Warren Wing, and William M. Stokes from the rejection of their several applications hereinbefore referred to were pending, unheard and undetermined, and have not since been heard or determined. (Eighth stipulation, p. 20; Exhibit A, p. 118; Exhibits one to none, inclusive.)

XI.

While said appeals and motions were pending and undisposed of, a clerk of the General Land Office at Washington, whose duty it was to examine entries

of the character described, in ignorance of the pendency of said conflicting claims, said motions, and said appeals, approved the lands described in the said patent for patenting to Thomas Reed, one of the defendants hereto, and a patent was, upon such approval, issued to him on the 20th day of November, 1889; that said patent was signed by the Secretary to the President and countersigned by the recorder of the General Land Office, each of whom at the time they signed and countersigned said patent as aforesaid, were in ignorance of the pendency of the aforesaid conflicting claims, and acted wholly upon the said approval of said clerk. The approval of the entry for patent and the signatures to the patent were made, notwithstanding the fact that a caveat pointing out the conflicts was on file with the rest of the entry papers relating to the lands involved and such approval and signatures were made in ignorance of the contents of said caveat. (Fourth and fifth stipulations, Exhibits 7 and D.)

XII.

Said patent was delivered on the 29th day of November, 1889, recorded in Book D of patents, page 54, in the office of the register of deeds of St. Louis County, Minn. (Answer, p. 13.)

XIII.

Demand has duly been made by and under the direction of the Secretary of the Interio upon the defendants and each of them, for a relinquishment of all right, title, and interest in or to said land derived by them under or on account of the issuance of said patent, and said defendants and each of them have refused to comply with such demand. (Answer, p. 13.)

XIV.

Thomas Reed, to whom the patent was issued, one of the defendants herein, has been defaulted, and an order has been entered adjudging him in default, and that the bill of complaint as against him be taken as confessed. (Pages 150 to 152, inclusive, of record.)

XV.

The answer of defendants other than Reed attempts to allege that such defendants took the real estate described in said patent in good faith, without notice of the circumstances attending the issuing of the patent, and for a valuable consideration. There is some evidence in the record bearing upon this question, but before the taking of the testimony was concluded solicitors for defendants notified complainant that such defense would not be relied upon, and therefore this point is not further noticed in the abstract of facts and will not be referrred to in the brief of complainant. This question being eliminated from the controversy, the contention stands the same as if between the Government and the patentee, Reed, and it is upon this theory that it will be submitted in complainant's brief. (Rec., pp. 28–31.)

The facts are summarized by the court of appeals as follows:

This was a bill filed by the Attorney-General in behalf of the United States to cancel a patent for certain lands situated in the Duluth land district of the State of Minnesota, which was issued by mistake to Thomas Reed on the 20th day of November, 1889.

The admitted facts on which the Government predicates its right to the relief sought by the bill are substantially these:

On the 21st of July, 1885, the land in question being a part of the public domain, Orilie Stram adjusted a certain scrip location thereon that had been previously made, which location was duly posted in the office of the Commissioner of the General Land Office on the 9th day of the following September. The validity of such location was contested by Fred. T. Huntress. Thomas W. Hyde and Angus McDonald also made certain preemption claims to some of the same lands, and the controversy thus raised came by appeal before the Secretary of the Interior.

On February 18, 1889, the Secretary disposed of the appeal for the time being, holding that the scrip location of said Stram was invalid, and that the Hyde and McDonald claims must likewise be rejected.

Thereafter, on February 23, 1889, Thomas Reed was allowed to make a soldier's additional homestead entry on a part of said lands and to obtain a final certificate therefor, numbered 1420. At the same time that Reed made his entry Charles P. Wheeler, Warren Wing, and William Stokes were present and sought to make entries on the lands now in dispute, in pursuance of various provisions of the land laws of the United States, but they were less successful. The applications of Wheeler, Wing, and Stokes were denied, and they thereupon prosecuted appeals to the Commissioner of the General Land Office.

On the 18th of February, 1889, and long prior thereto, there was a rule in force in the Department of the Interior to the following effect: That motions for the review of decisions of the Secretary of the Interior and applications under Department rules 83 and 84 should be filed with the Commissioner of the

General Land Office, who should thereupon suspend action under the decision sought to be reviewed, and forward to the Secretary such motion for review or application.

Motions in behalf of Stram, Hyde, and McDonald to obtain a review of the Secretary's decision of February 18, 1889, were duly made and filed on March 13 and 15, 1889, and pursuant to the rule aforesaid an order was made suspending all action on said decision, which order was in full force on November 20, 1889, when the patent to Reed was issued. At the latter date the appeals of Wheeler, Wing, and Stokes, heretofore mentioned, were pending and undetermined, and are still undetermined by the Land Department.

Notwithstanding these facts, while the aforesaid motions and appeals were pending, a clerk in the General Land Office approved the lands in controversy for patenting to said Thomas Reed, and in consequence of such approval a patent was issued on November 20, 1889. The action of the clerk in approving the lands for patenting appears to have been induced solely by oversight in failing to take notice of the pendency of the motions for review aforesaid and the order made thereon suspending action under the Secretary's decision of February 18, 1889. The President's signature to the patent by his secretary, and the signature of the recorder of the General Land Office were each induced by the action of said clerk in inadvertently approving the land for patenting.

The patentee, Reed, who was named as a defendant in the circuit court, suffered a default. The appellants have acquired title to the lands in controversy by mesne conveyances under Reed, but it is not claimed that as purchasers in good faith they

have a better title than their grantor. The circuit court decreed that on the facts aforesaid, which were undisputed, the Government was entitled to a cancellation of the Reed patent on the ground of accident, inadvertence, and mistake, and from such ruling the defendants below have prosecuted an appeal. (Rec., pp. 123, 124.)

The brief for appellants contains the following:

> It is, however, shown by the Government's testimony, and is indeed an uncontroverted fact, that when the patent issued there were pending and undetermined in the Interior Department certain appeals and motions for review or reargument, instituted by persons who were claiming this land adversely to Reed in spite of the several decisions which had been rendered in his favor; and that the issuance of the patent at that time, in the face of these pending attempts to reverse the Land Office decisions already made, was due to the fact that the officers charged with the issuance of patents inadvertently overlooked the pendency of said appeals and motions for review. (Page 2.)
>
> By force of a general rule of the Department of the Interior, and also by express order of the Acting Commissioner and of the Secretary of the Interior, further action with reference to said lands was thereupon suspended until action should be had upon the motion for a review of the Secretary's decision. (Bill, folio 9; stipulation, folio 39; and see folio 103 of printed record.)
>
> The motions for review were still undisposed of when the patent issued, November 20, 1889. (Page 4.)

POINTS AND ARGUMENT.

I.

The first point made by appellants in their brief (p. 10) is that "it was the President's mistake."

While theoretically grants are authenticated by the President, as a matter of Departmental practice, he never sees them. But assuming that the mistake was in law the mistake of the President, it does not thereby acquire such sanction as to make the patent unassailable.

That patents issued by mistake can, notwithstanding the fact that they are signed by the President, be set aside by the courts is not an open question.

United States v. *Stone*, 2 Wall., 525, 535.
Shepley et al. v. *Cowan et al.*, 91 U. S., 330, 340.
Moore v. *Robbins*, 96 U. S., 530.
Marquez v. *Frisbie*, 101 U. S., 473, 476.
United States v. *Atherton*, 102 U. S., 372.
United States v. *San Jacinto Tin Co.*, 125 U. S., 273, 282.
United States v. *Beebe*, 127 U. S., 338, 342.
United States v. *Marshall Mining Co*, 129 U. S., 579, 588.
Williams v. *United States*, 138 U. S., 514, 517.

In the latter case the court said:

> If, through inadvertence and mistake, a wrong description is placed in a deed by an individual, and property not intended to be conveyed is conveyed, can there be any doubt of the jurisdiction of a court of equity to interfere and restore to the party the title which he never intended to convey? So of any other inadvertence and mistake, vital in its nature, by which a title is conveyed when it ought

not to have been conveyed. The facts and proceedings attending this transfer of title are fully disclosed in the bill. They point to fraud and wrong, and equally to inadvertence and mistake; and if the latter be shown, the bill is sustainable, although the former charge against the defendant may not have been fully established. (Page 517.)

II.

The second proposition in the brief for appellants is:

> The patent invested us with the legal title, and, notwithstanding the mistake, is prima facie evidence of our right to the land. (Brief, p. 11.)

It is conceded by the Government that the patent carried the legal title. It is because of this, and the fact that it was issued by mistake and that the legal title was passed out of the Government wrongfully, that the suit was instituted.

If the way of the Government be clear of other difficulties, the fact that the patent carried the legal title and constituted prima facie evidence of right to the land, so far from presenting an obstacle to granting relief, is a necessary condition for it. If the title had not passed, the Department of the Interior would be competent to deal with the questions.

In *Moore* v. *Robbins* (96 U. S., 533), the court, after stating that the title passed by the issuance of the patent under the seal of the United States and signed by the President, said:

> With the title passes away all authority or control of the Executive Department over the land and

> over the title which it has conveyed. It would be as reasonable to hold that any private owner of land who has conveyed it to another can, of his own volition, recall, cancel, or annul the instrument which he has made and delivered. If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the lands as to individuals; and if the Government is the party injured, this is the proper course.

In the cases above referred to, such as the San Jacinto, Beebe, and Williams cases, the title had passed by virtue of the patent, and was prima facie evidence of right to the land. The patent stands until assailed, and the burden of proof is upon the Government to make out the facts relied on for cancellation.

The brief, still keeping up the fiction of the issuance of the patent by the President, says:

> The President was dealing with public land open to entry, knew he was conveying the tract in controversy to Thomas Reed, in pursuance of an entry thereof made by Reed under the act relating to soldiers' additional homesteads, and deliberately intended to do exactly what in fact he did. (Brief, p. 12.)

This is hardly ingenuous, when taken in connection with the admissions made on pages 2 and 4 of the brief, that the patent was issued by mistake and in violation of a general rule of the Department, and also of an express order of the Secretary of the Interior.

In this case there is no controversy about the facts. The fact that the President issued the patent and that

the patent carried title are immaterial in view of the well-settled law that such patents and such titles can be, in a direct proceeding, instituted by the Attorney-General, annulled for mistake.

The only questions worth considering are whether the mistake which was made in this case was of such character as would warrant the court in annulling a patent, and whether or not the United States have such an interest or duty as will make the suit maintainable by them.

The case of *Williams* v. *United States* (138 U. S., 514), cited on page 12 of appellant's brief, to sustain the proposition that a patent issued through inadvertent disregard of contests over the title, still pending in the General Land Office, passes title, goes further, and holds that such title can, at the instance of the Government, be canceled. It is true that in that case the patent itself was not canceled, but this was because it was made to the State of Nevada, which was not before the court. Nevertheless the title in the grantee from the State was annulled, and that was all the court could do in that case with the parties before it.

III.

The third proposition relied on by appellants is:

> Mistake and accident are relievable in equity only when they have produced unjust results. (Brief, p. 14.)

The soundness of this statement is not questioned, but its application is challenged. It is assumed that no un-

just result has been produced. It is said, after elaborating the legal proposition:

> Why, then, should a court of equity divest us of our legal title only in order, so far as it appears, that it may be forthwith more formally and regularly returned to us.
>
> Indeed, since upon the testimony we are presumptively entitled to the patent and to the ultimate legal ownership of the land, our case falls squarely within the case of *United States* v. *Central Pac. R. R. Co.* (26 Fed. Rep., 479, 482, 483), in which it was held that a court of equity would not indulge in the folly of canceling a patent, although wrongfully issued at the time, if apparently the cancellation would be followed by the issuance of a new patent to the same parties. (Brief, p. 15.)

There is no reason in doing what the quotation states, and there is likewise no reason for assuming that such a state of facts exists. Certainly the patent will not issue to appellant if the Department of the Interior, on all the matters, holds adversely to him. The questions involve facts and law, and the Department of the Interior is intrusted with their decision. Appellants want this court to try questions pending there, the decision of which was interfered with by the erroneous issuance of the patent, and to adjudge that necessarily and without doubt the Department of the Interior will, if it be permitted to pass on these questions, adjudicate a patent to him. This involves two difficulties; first, that this court invade the special jurisdiction of the Department intrusted with the administration of the public lands, and enter a judgment for it primarily, and not upon proper

proceedings for the correction of its errors, and, second, that it will, while the controversy is yet pending in the Department intrused with its decision, without the full record, and upon a state of facts which the Department may consider inadequate, and which it may cause to be supplemented, determine finally that the right can only be in favor of appellant.

It was upon what the court considered a clear case that its interference would not change the final result that there was a refusal to cancel the patent in *United States* v. *Central Pacific R. R. Co.* (26 Fed. Rep., 479). The court, whether right or wrong, held that the lands covered by the patent were unquestionably indemnity lands, and that the railroad company then had a clear and absolute right, good against the United States, to immediately have a patent issued for those identical lands, and that for this reason it would not do the useless thing of canceling a patent when, as held by the court, another would necessarily have to be issued. There was nothing pending before the Department of the Interior, and its jurisdiction was not set aside. That case, and the principle enunciated by appellant, are in point here if the court shall feel competent, upon this record, to decide the question which is now pending before the Department of the Interior, and has not reached a final judgment there, and shall say that necessarily appellant must prevail in his claim to a patent to the land in question. Otherwise they are not in point.

Appellant complains, in this connection (brief, p. 16), that the Government does not allege that he will not

ultimately be entitled to the land. It is manifest that such an allegation would have been highly improper. It would be undertaking to forestall the judgment of the Department of the Interior upon the very question in controversy.

IV.

The fourth proposition relied on by appellants is:

> It is not shown that the inadvertence complained of has resulted in such injury to anyone as to justify cancellation in equity. (Brief, p. 17.)

The brief proceeds as follows:

> If there has been such an injury, what is it? Not the loss of the land, for it is not claimed by the Government that any of Reed's competitors had, or ever could have, acquired a right to the land as against the defendant Reed. The alleged injury which those parties are supposed to have suffered consists wholly in the fact that by accident or inadvertence they have lost the right to have certain rehearings in the Department of the Interior, which they hoped might result in the reversal of decisions already made against them. (Brief, p. 17.)

Here again the point is made that the Government does not undertake to prejudge, as a foundation for its right to sue, and say that other parties have a better right than appellants, and does not allege and prove that they have necessarily been substantially injured. This view of the case puts the Government in the place of a party to an ordinary litigation, seeking the aid of a court of equity to secure a new trial. It leaves out of consideration the true character of the case. The United States owns the

lands in question, and has intrusted to a particular Department their administration and the determination of conflicting claims. In respect of these claims and the lands the Department is a special tribunal, a court which hears, tries, and decides controversies.

Shepley et al. v. *Cowen et al.*, 91 U. S., 340.
Moore v. *Robbins*, 96 U. S., 535.
Knight v. *U. S. L. A.*, 142 U. S., 161.
Orchard v. *Alexander*, 157 U. S., 381.
Nesqually v. *Gibbon*, 158 U. S., 156.
In re Emblen, 161 U. S., 56.

In respect to matters of fact passed upon the judgment of this Department is in no way reviewable. (*Shepley* v. *Cowan*, 91 U. S., 330; *Moore* v. *Robbins*, 96 U. S., 530, 535; *Nesqually* v. *Gibbon*, 158 U. S., 166.) While it has pending before it contests in respect to the awarding of title to the land in question, by a mistake made by a clerk, and in violation of its rules of practice, a patent is issued to appellant, which carries title to the land and destroys the jurisdiction of the court. The mistake is admitted, and the fact that the jurisdiction of this Department specially intrusted with the adjudication of the questions affecting this title was thereby lost is admitted, but it is said that the Government can not obtain relief unless the Attorney-General, who instituted the suit, alleges and proves that the pending controversy would have been decided and rightly decided against the appellant. This the Attorney-General could not do unless he could know all the facts that might, before a final decision, come before the Department of the Interior, and unless the officers of that Department were

guilty of the unjudicial conduct of saying beforehand how they were going to determine a controversy. The case is likened by appellant to an appeal to a court of equity to grant a new trial of a case at law. A proceeding of this character, where conflicting claims are being considered by a Department, can not be put in the same class with formal trials at law before courts and juries. (*United States* v. *Minor*, 114 U. S., 242–244.)

It would be disastrous to carry the analogy to that extent and hold that jurisdiction could not be restored by canceling a patent issued by mistake pending the consideration of conflicting claims, except upon the strict lines laid down in respect of reviewing the procedure of a formal court.

If such a rule be adopted, then it will be in the power of clerks, in the vast amount of business which passes through such a Department as that of the Interior, to take away from the Department and transfer to the courts all controversies respecting conflicting claims to land patents.

The case is not to be regarded merely as one brought by the United States for the benefit or in the interest of other parties. It is more in the nature of a suit by a trustee, who, while administering a trust fund under an active trust requiring the exercise of judgment and discretion, is deprived by fraud or mistake not only of the fund, but of the instrument which clothes him with authority, and without which his functions are suspended, and the administration of the trust is defeated and his judgment can not be exercised.

V.

The next ground relied on by appellant is as follows:

> The evidence fails to make a case in favor of the Government as a vendor of lands suing for the cancellation of its conveyance. (Brief, p. 26.)

The argument under this proposition proceeds upon the idea that the Government is a mere trustee, holding the naked legal title, which must go to one of several contestants, and that, having parted with this title by mistake to one of these contestants, it can not seek the aid of equity to reinvest it with the title without showing that in no event would the patentee have the right to it, and for the reason that one of the other contestants has a clear and superior right to it. This ignores the fact that the Government is the absolute owner of the land until it has parted with it intentionally, and that it is seeking to be reinvested with the title to its own land, which it may or may not part with. It was a proposed donation, which Congress might defeat until executed. The land is the property of the Government, and if it has passed the title by mistake, the facts alone of ownership and mistake are sufficient to sustain the bill, irrespective of all other questions.

There can be no question that an individual who intended to donate land under certain conditions to one of several persons could, if a deed drawn and donating it to one had been delivered by a mistake of his clerk to such donee, file a bill to have the deed canceled, and alone upon the ground that the land was his until he had parted with the title, and that the title had passed unintentionally and by a clear mistake, and this without

his alleging that he would not, when reinvested with the title, give it to the same donee, or that he would give it to one of the other contemplated beneficiaries. How can it be said that the United States have no interest, when it is the owner of the land? It can not be said that this is a suit brought merely for the benefit of a third party. The Government owned the land, certainly, when the patent issued, for appellants claim that they got title to it by virtue of the patent. It is none the less the owner in a court of equity when it appears, as is admitted in this case, that the patent should not have issued, that it was unintentional on the part of the Government, and that it did not willingly pass the title. As to what the Government may do with the land ultimately is a question that ought not to be for a moment entertained, when urged by one who is trying to hold a title which confessedly he came by wrongfully.

The Government is an injured party when a person has acquired through fraud or mistake a title to its property.

In *Moore* v. *Robbins* (96 U. S., 530, 533), the court said:

> If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals, and if the Government is the party injured, that is the proper course.

In *Moffat* v. *United States* (112 U. S., 24, 32) a patent procured by a conspiracy was set aside as "a fraud upon the jurisdiction of the officers of the Land Department."

In *United States* v. *Beebe* (127 U. S., 342) the court said:

> The public domain is held by the Government as part of its trust. The Government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and, under certain circumstances, to invest the individual citizen with the sole possession of the title which had till then been common to all the people as the beneficiaries of the trust. If a patent is wrongfully issued to one individual which should have been issued to another, or if two patents for the same land have been issued to two different individuals, it may properly be left to the individuals to settle, by personal litigation, the question of right, in which they alone are interested. But if it should come to the knowledge of the Government that a patent has been fraudulently obtained, and that such fraudulent patent, if allowed to stand, would work prejudice to the interests or rights of the United States, or would prevent the Government from fulfilling an obligation incurred by it, either to the public or to an individual, which personal litigation could not remedy, there would be an occasion which would make it the duty of the Government to institute judicial proceedings to vacate such patent.

In *United States* v. *Missouri, &c., Railway* (141 U. S., 380) the court said:

> That the case, as now presented, is one of equitable cognizance, we do not doubt. This question must be determined with reference to the equity jurisdiction of the courts of the United States, and not by reference to the remedies given by the local law. As to some of the lands, so far as we can judge by the averments of the bill, the United

> States has a direct interest in them. As to others, it is under an obligation to claimants under the homestead and preemption laws to undo the wrong alleged to have been done by its officers, in violation of law, by removing the cloud cast upon its title by the patents in question, and thereby enable it to properly administer these lands, and to give clear title to those whose rights, under those laws, may be superior to those of the railway company. A suit, therefore, to obtain a decree annulling the patents in questions, so far as it is proper to do so, was required by the duty the Government owed as well to the public as the individuals who acquired rights which the patents, if allowed to stand, may defeat or embarrass.

In *United States* v. *San Jacinto Tin Co.* (125 U. S., 273, 286, 287) the court, recognizing the principle that the Government could not sue for the benefit of some third party, and not without it had a pecuniary interest, or was under an obligation to a party who would be benefited by the action, although it appeared that one Baker, who was behind the suit, expected, by reason of a contest, that his right to the land would become paramount if the patent should be set aside, said:

> But we are not so entirely satisfied of the want of interest of the United States in the whole or a part of the land which is covered by this patent as to justify us in saying that the bill in the present case ought to be dismissed on that ground. (Page 287.)

In this case, as in the one at bar, there had been no adjudication of the rights of the contesting party so as to divest the Government in any event of all interest or ownership in the land. The case would have been different if there had been an adjudication, which would

operate certainly for the benefit of another upon the cancellation of the patent. There is no such judgment, and if the patent be vacated, the land will become vested in the Government, subject to its *jus disponendi*, and it may be that none of the contestants will get it.

It has not been determined by the Department which one, if either, of the persons who are shown to be claimants to the land in question, is entitled to it. It may be that upon a final hearing of these various contests and motions for review the Land Department will decide that none of the claimants are entitled to the land covered by the Reed patent. Reed's right is disputed, as are also the claims of the other contesting parties. Should it finally be decided that none of those now claiming are entitled to the patent, then the land would be open for disposition, pursuant to law. This unsettled question, which the Land Department alone has primary jurisdiction to determine, as hereinbefore shown, discloses an interest in the Government sufficient of itself to enable it to maintain this action.

Then, too, the Government may have a direct and very large pecuniary interest in the result of this suit. If upon trial of the contest it should appear that the conflicting applications were simultaneous, the statute requires that the right of preference be determined by offering the tract to the highest bidder.

Revised Statutes of the United States, section 2365.

Helfrich v. *King*, Copp's Public Land Law (1882), 378.

Jayne v. *Gowdy*, same, 652.

Melville and Kelley, 1 L. D., 183.
Price and Gorgas cases, 2 L. D., 687.
Nichols v. *Darroch*, 14 L. D., 506.

It is manifest that it was the consideration that the title would revest in the Government to its own property that controlled the judgment of the court in reaching the above conclusion in the San Jacinto Case.

The circuit court and the circuit court of appeals both considered that the case of *Williams* v. *United States* (138 U. S., 514) controlled this case. Notwithstanding the attempt to distinguish it made by the appellants in their brief, it is insisted that the Williams Case is authority for the contention of the Government in this case.

The court held that if, through mistake in the Department of the Interior, a patent to land issues wrongfully, the title acquired by a vendee with notice may be cancelled at the instance of the United States. The court said:

> We rest it upon the incontrovertible fact that through inadvertence and mistake this land was certified to the State. (Page 522.)

The court was further controlled by the idea of revesting the Department of the Interior with jurisdiction. The court said:

> We do not mean to imply that any arbitrary discretion is vested in the Secretary; but we hold that the statute requiring approval by the Secretary of the Interior was intended to vest a discretion in him by which wrongs like this could be righted, and equitable considerations, so significant and impressive as this, given full force. It is obvious, it is common knowledge, that in the administration of

In *United States* v. *Beebe* (127 U. S., 342) the court said:

> The public domain is held by the Government as part of its trust. The Government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and, under certain circumstances, to invest the individual citizen with the sole possession of the title which had till then been common to all the people as the beneficiaries of the trust. If a patent is wrongfully issued to one individual which should have been issued to another, or if two patents for the same land have been issued to two different individuals, it may properly be left to the individuals to settle, by personal litigation, the question of right, in which they alone are interested. But if it should come to the knowledge of the Government that a patent has been fraudulently obtained, and that such fraudulent patent, if allowed to stand, would work prejudice to the interests or rights of the United States, or would prevent the Government from fulfilling an obligation incurred by it, either to the public or to an individual, which personal litigation could not remedy, there would be an occasion which would make it the duty of the Government to institute judicial proceedings to vacate such patent.

In *United States* v. *Missouri, &c., Railway* (141 U. S., 380) the court said:

> That the case, as now presented, is one of equitable cognizance, we do not doubt. This question must be determined with reference to the equity jurisdiction of the courts of the United States, and not by reference to the remedies given by the local law. As to some of the lands, so far as we can judge by the averments of the bill, the United

> States has a direct interest in them. As to others, it is under an obligation to claimants under the homestead and preemption laws to undo the wrong alleged to have been done by its officers, in violation of law, by removing the cloud cast upon its title by the patents in question, and thereby enable it to properly administer these lands, and to give clear title to those whose rights, under those laws, may be superior to those of the railway company. A suit, therefore, to obtain a decree annulling the patents in questions, so far as it is proper to do so, was required by the duty the Government owed as well to the public as the individuals who acquired rights which the patents, if allowed to stand, may defeat or embarrass.

In *United States* v. *San Jacinto Tin Co.* (125 U. S., 273, 286, 287) the court, recognizing the principle that the Government could not sue for the benefit of some third party, and not without it had a pecuniary interest, or was under an obligation to a party who would be benefited by the action, although it appeared that one Baker, who was behind the suit, expected, by reason of a contest, that his right to the land would become paramount if the patent should be set aside, said:

> But we are not so entirely satisfied of the want of interest of the United States in the whole or a part of the land which is covered by this patent as to justify us in saying that the bill in the present case ought to be dismissed on that ground. (Page 287.)

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> such large and varied interests as are intrusted to the Land Department, matters not foreseen, equities not anticipated, and which are therefore not provided for by express statute, may sometimes arise, and, therefore, that the Secretary of the Interior is given that superintending and supervising power which will enable him, in the face of these unexpected contingencies, to do justice. (Page 524.)

The point made, that the Government must show a pecuniary interest or a superior right in some other person which it is under moral obligations to defend, is sufficiently answered by the case of *United States* v. *Bell Telephone Co.* (128 U. S., 315). That case went off purely upon the idea of the Government maintaining its jurisdiction to issue patents and discharging its duty as a trustee to the public generally. The Government could have no pecuniary interest in vacating the patent, and there was no contention that a better right existed in some one else to whom the Government was under obligation to issue a patent. It was simply a question of whether or not a person could by fraud procure a title from the Government and then defend by saying that the Government had no interest in vacating it. The right to be placed in statu quo and of being put in a position to administer the public trust was sufficient to sustain the suit.

The case was put identically upon the same ground and upon the same principles that would have applied in the issuance of a patent for land.

The court said:

> The power, therefore, to issue a patent for an invention and the authority to issue such an instru-

ment for a grant of land emanate from the same source, and, although exercised by different bureaux and officers under the Government, are of the same nature, character, and validity, and imply in each case the exercise of the power of the Government according to modes regulated by acts of Congress. (Pages 358, 359.)

The authorities relied on by the court were land cases. See pages 365 to 367.

The court, upon the question of interest, said:

> This language is construed by counsel for the appellee in this case to limit the relief granted at the instance of the United States to cases in which it has a direct pecuniary interest. But it is not susceptible of such construction. It was evidently in the mind of the court that the case before it was one where the property right to the land in controversy was the matter of importance, but it was careful to say that the cases in which the instrumentality of the court can not thus be used are those where the United States has no pecuniary interest in the remedy sought, and is also under no obligation to the party who will be benefited to sustain an action for his use, *and also where it does not appear that any obligation existed on the part of the United States to the public* or to any individual. The essence of the right of the United States to interfere in the present case is its obligation to protect the public from the monopoly of the patent which was procured by fraud, and it would be difficult to find language more aptly used to include this in the class of cases which are not excluded from the jurisdiction of the court by want of interest in the Government of the United States.
>
> It is insisted that these decisions have reference exclusively to patents for land, and that they are

not applicable to patents for inventions and discoveries. The argument very largely urged for that view is the one just stated, that in the cases which had reference to patents for land the pecuniary interest of the United States was the foundation of the jurisdiction. This, however, is repelled by the language just cited, and by the fact that in more than one of the cases, notably in *United States* v. *Hughes*, *supra*, the right of the Government to sustain the suit was based upon its legal or moral obligation to give a good title to another party who had a prior and a better claim to the land, but whose right was obstructed by the patent issued by the United States. (Pages 367, 368.)

VI.

The sixth proposition in appellants' brief is as follows:

> Can the Government, in its sovereign capacity, maintain this suit for the purpose of enforcing regularity in the proceedings of the Interior Department? (Brief, p. 33.)

This misstates the question. It is not a question of enforcing departmental rules. The Department is itself competent to do that. It is a question of cancelling an instrument which issued by mistake and deprived the Department of all jurisdiction over the subject-matter. It is a question of vindicating the jurisdiction of the Department and preventing a party from profiting by a mistake and by his wrongful act in holding a title wrongfully acquired. The sum of the contention of appellants is:

> In other words, while the nation can maintain a suit to cancel an instrument by which it is unlaw-

> fully prevented from fulfilling its contracts and equitable obligations as a vendor of lands (obligations of which there is not a pretense here), it can not maintain such a suit as a sovereign to vindicate the administration of justice in any of its tribunals, special or general, whether executive or judicial, against fraud, mistake, accident, ignorance, or any of the other vicissitudes to which governmental machinery may fall a victim. (Brief, p. 43.)

That is to say, the Government can bring the suit where it has awarded title to another, or is under an absolute obligation to do so, but is powerless to bring it when controversies are pending, and it has not yet been finally ascertained that any claimant other than the one who, by fraud or mistake, has gotten the title, is entitled to the land. Can any proposition put a sovereign in a weaker position? It can not recover its title to its own land, because one or the other of several claimants may be entitled to it, and ergo it has no such interest as entitles it to sue. It can not recover it for the purpose of determining this controversy, because it is not in a position to allege and prove that one of those claimants certainly has a better right than the patentee.

If one can walk off with a title to Government land, acquired by mistake, and upon such a defense, the Government is in an attitude which is, at least, ridiculous.

J. M. DICKINSON,
Assistant Attorney-General.